

LATHAM & WATKINS LLP

Douglas E. Lumish (SBN 183863)

doug.lumish@lw.com

Gabriel S. Gross (SBN 254672)

gabe.gross@lw.com

Arman Zahoory (SBN 306421)

arman.zahoory@lw.com

Rachel S. Horn (SBN 335737)

rachel.horn@lw.com

140 Scott Drive

Menlo Park, California 94025

Telephone: (650) 328-4600

Facsimile: (650) 463-2600

Attorneys for Defendant and Counterclaimant

Skyryse, Inc.

Additional counsel listed on signature page

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

MOOG INC.,

Plaintiff,

v

SKYRYSE, INC., ROBERT ALIN
PILKINGTON, MISOOK KIM, and
DOES NOS. 1-50,

Defendants.

CASE NO. 2:22-cv-09094-GW-MAR

**DEFENDANT AND
COUNTERCLAIMANT SKYRYSE,
INC.'S SUPPLEMENTAL
MEMORANDUM IN SUPPORT OF
ITS MOTION TO OVERRULE
MOOG'S OBJECTION TO
SKYRYSE'S DISCLOSURE OF
CONFIDENTIAL INFORMATION TO
VINCENT SOCCI**

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SKYRYSE, INC.,
Counterclaimant,
v
MOOG INC.,
Counterclaim-Defendant.

Discovery Cut-Off: April 12, 2024
Pre-Trial Conference: August 12, 2024; 8:30 a.m.
Trial: August 27, 2024

Hearing: June 28, 2023
Time: 11:00 a.m.
Judge: Hon. Margo A. Rocconi

Location: Courtroom 790, 7th Floor

I. INTRODUCTION

Skyryse has moved to overrule Moog's objection to Skyryse sharing confidential information with expert witness Vincent Socci. But in its opposition, Moog does not even attempt to make the factual showing required by the protective order and by the law to sustain its objection. Namely, Moog does not identify any risk of harm it would suffer if Mr. Socci were to receive such information, much less one that outweighs Skyryse's need to work with its expert. Moog also fails to show Mr. Socci is involved in competitive decision-making, for he is not a competitor or employed by one. He runs his own firm, which is engaged by other companies for contract engineering projects. Since Moog has failed to meet its burden, its objection cannot be sustained and must be overruled.

Moog's opposition shows it has not been forthcoming. First, Moog waited until after it received Skyryse's motion to surprise Skyryse with details about contract work Mr. Socci did for Moog nearly twenty years ago—after concealing those facts when counsel met and conferred. Moog then provides a declaration from one of its employees baselessly purporting to know what Mr. Socci has in his own mind. Next, Moog asks the Court to disqualify Mr. Socci from participating in this action at all, as if there were a bright-line rule barring him from ever working adversely to Moog. This is not the law, and the Court should not permit Moog to leverage an opposition brief to such obtain drastic relief it has not moved for.

The facts remain that (1) Moog failed to address or meet its legal burden; (2) it has not come forward with any contract imposing on Mr. Socci any confidentiality or other obligations to Moog; (3) Mr. Socci does not have or remember any of Moog's confidential information; (4) he has sworn he will base his work in this case only on information he receives through this action; and (5) he also has sworn to abide by the safeguards and restrictions of the stipulated protective order. Respectfully, the Court should overrule Moog's objection and deny Moog's defective request for disqualification.

II. MOOG FAILS TO ADDRESS OR MEET ITS BURDEN.

The parties stipulated to a protective order governing the treatment of confidential information (Dkt. 89.) It requires a party that intends to disclose confidential information to an expert first to make a written request to the Designating Party. If the Designating Party objects, the party seeking to make the disclosure may file a motion with the Court. (*Id.* § 6.6(c).) “[T]he Party *opposing disclosure* to the Expert *shall bear the burden* of proving that the risk of harm the disclosure would entail (under the safeguards proposed) outweighs the Receiving Party’s need to disclose the Protected Material to the Expert.”¹ (*Id.*)

Moog never engages with the standard imposed by the Protective Order. Instead, it argues that Mr. Socci should be disqualified from working for Skyryse, without showing any risk of harm or weighing it against Skyryse’s need to work with him. Moog’s position that “Skyryse asks this Court to undertake an extensive and irrelevant balancing analysis” misses the mark. The Protective Order requires that very analysis. Nor is this dispute regarding disclosures under the Protective Order the proper vehicle for Moog to seek to disqualify an expert. The primary question before the Court is whether Moog has met its burden to demonstrate a risk of harm so great that it outweighs Skyryse’s need to work with Mr. Socci and let him access Moog’s designated materials.² Moog has not met that burden.

III. MOOG FAILS TO SHOW ANY RISK OF HARM ARISING FROM MR. SOCCI’S CONTRACTING WORK MANY YEARS AGO.

Moog fails to rebut that (1) Mr. Socci does not have any Moog information, confidential or otherwise, that he might have once accessed during his work for

¹ All emphasis in quotes has been added unless otherwise indicated.

² Per the Court’s order on Skyryse’s motion regarding the insufficiency of Moog’s trade secret identification, if Moog’s amended trade secret identification continues to be deficient, the Court will require expert testimony to explain this. (Dkt. 534 at 10.) Skyryse anticipates needing to consult with Mr. Socci on the issue, which necessarily would require him to access material designated under the protective order.

1 Moog many years ago; (2) he was never an employee of Moog, but provided con-
 2 tracted services through On Target Motion which does not compete with Moog;
 3 (3) he is not engaged in competitive decision-making for a competitor; (4) he has
 4 agreed to keep any confidential information he may have obtained through prior
 5 work for Moog confidential and not share it with Skyryse, if he recalls or encounters
 6 any such information; and (5) he has sworn to abide by his obligations under the
 7 Protective Order. (Socci Decl. at ¶¶ 8-15.)

8 Additionally, Moog's newly disclosed assertion (in a declaration by engineer
 9 Keith Pieroni) that Mr. Socci worked on certain projects for Moog fails to show how
 10 that work may relate to any specific trade secrets at issue in this case, which Moog
 11 alleges were misappropriated 15 to 18 years later.³ For example, Moog claims
 12 Mr. Socci worked on specific programs it asserts are at issue but provides no infor-
 13 mation about how or whether that work is tied to any trade secrets to be litigated in
 14 this case. But more importantly, even if Mr. Socci nearly twenty years ago worked
 15 on trade secrets that are now at issue in this action, Moog fails to make any showing
 16 that this prior work creates some untenable risk of harm to Moog today if Mr. Socci
 17 were shown confidential information during his work on this case. To the contrary,
 18 if Moog entrusted Mr. Socci with confidential information before, there is no reason
 19 to suspect he cannot be trusted with it or to abide by his obligations under the Pro-
 20 tective Order today.

21 Moog also contends that Mr. Socci has information about programs that are
 22 *not* at issue in this case but fails to show how this presents any risk of harm. Nor

24
 25 ³ Mr. Pieroni's declaration includes baseless speculation about Mr. Socci's state of
 26 mind. For example, Mr. Pieroni purports to know what topics "Mr. Socci had inti-
 27 mate knowledge of" years ago, and claims to know facts Mr. Socci "has personal
 28 knowledge related to" as of today. (Pieroni Decl. at ¶ 12, 16.) Mr. Pieroni purports
 to have "personal knowledge" of information in Mr. Socci's mind and possession
 (*id.*, ¶ 3), but nowhere states that he ever actually worked or communicated with
 Mr. Socci. Mr. Pieroni cannot speak to what Mr. Socci knew then, let alone what he
 can recall now—which, as Mr. Socci has stated in his declaration, is nothing. (Socci
 Decl. at ¶¶ 12, 14.)

could it, for Skyrise has no intention of having Mr. Socci opine on topics not relevant to this matter. And while Mr. Socci does not remember the details of the Moog programs he worked on, he has agreed not to use any information he obtained from Moog if he comes across or recalls it in the future.⁴ (Socci Decl. at ¶¶ 12, 15.)

Moog has not come forward with any contract imposing confidentiality obligations Mr. Socci owed to Moog during their contractor relationship or afterward, or any reason to think he would violate them if they exist. Moog instead suggests that Mr. Socci and Moog had a prior “confidential *relationship*.” This misses the point.⁵ Moog cannot meet its burden to show some undue risk of Mr. Socci violating confidentiality obligations when it has provided no evidence of (1) what those alleged obligations were or are still are, or (2) any legitimate reason to think Mr. Socci would violate them.

IV. MOOG HAS NOT BEEN FORTHCOMING.

Finally, Moog’s opposition makes arguments it held back in meet and confer. For weeks, Skyrise asked Moog to explain the basis for its objection. In response, Moog offered only vague statements that Mr. Socci worked on certain trade secret programs at Moog, failing to provide specifics or explain what risks Mr. Socci’s involvement could create, despite Skyrise’s inquiries. (*See* Storey Ex. A.). Moog waited until after it had received Skyrise’s motion, at the deadline for Moog to provide its portion of the joint stipulation, to divulge the facts about the contract work that Mr. Socci did for Moog many years ago, revealing them for the first time in Mr. Pieroni’s declaration. Moog’s tactical decision to conceal these facts impeded

⁴ Even after reviewing Mr. Pieroni’s declaration, Mr. Socci has confirmed he does not recall any confidential technical information from his work at Moog.

⁵ The cases on which Moog relies identify the basis for any confidentiality obligations owed to the Designating Party, which Moog has failed to do. *See e.g., Eastman Kodak Co. v. Agfa-Gevaert N.V.*, No. 02-CV-6564, 2003 WL 23101783, at *1 (W.D.N.Y. Dec. 4, 2003) (“even today Hailstone is obligated to abide by the terms of an employment agreement he entered into with Kodak”); *Pellerin v. Honeywell Int’l Inc.*, No. 11CV1278-BEN CAB, 2012 WL 112539, at *2 (S.D. Cal. Jan. 12, 2012) (“[I]t is undisputed that Mr. Fleming was a former employee of the defendants and in relation to his employment entered into confidentiality agreements . . .”).

1 Skyryse's ability to try to resolve, or at least narrow, this dispute and prevented
 2 Skyryse from knowing the full basis of Moog's objection until after it had finalized
 3 its initial submission to the Court and could not respond. This is not a good faith
 4 approach to the meet-and-confer process.

5 Further, Moog makes a "non-motion motion" of sorts, asking the Court in its
 6 opposition brief to disqualify Mr. Socci as an expert altogether, knowing Skyryse
 7 would be limited to just this five-page supplemental submission in response. Rather
 8 than taking on its burden to show that there is a risk of harm from disclosure that
 9 outweighs Skyryse's need to disclose the confidential material to Mr. Socci, Moog
 10 argues Mr. Socci should be disqualified in the first instance. This is not just proce-
 11 durally improper but substantively wrong. Moog would have the Court adopt a
 12 bright-line rule that no one who ever worked for Moog could later work as an expert
 13 for one of Moog's adversaries, even many years later. As even the case Moog relies
 14 upon makes clear, this is not the rule. *See Space Sys./Loral v. Martin Marietta Corp.*,
 15 No. CIV. 95-20122 SW, 1995 WL 686369, at *4 (N.D. Cal. Nov. 15, 1995) (denying
 16 motion to disqualify where expert had worked with confidential information of the
 17 designating party during past employment). The Court should reject Moog's attempt
 18 to turn this dispute over disclosures under the Protective Order into a motion to dis-
 19 qualify and find that Moog has failed to establish any grounds on which to preclude
 20 Mr. Socci from participating in this action.

21 **V. CONCLUSION**

22 Skyryse respectfully requests that the Court grant this motion and overrule
 23 Moog's objection.

1 Dated: June 14, 2023

Respectfully submitted,

2 LATHAM & WATKINS LLP

3 By: Gabriel S. Gross

4 Douglas E. Lumish (SBN 183863)

5 Gabriel S. Gross (SBN 254672)

6 Arman Zahoory (SBN 306421)

7 Rachel S. Horn (SBN 335737)

8 Menlo Park, California 94025

9 Telephone: (650) 328-4600

10 Facsimile: (650) 463-2600

11 Email: doug.lumish@lw.com

12 gabe.gross@lw.com

13 arman.zahoory@lw.com

14 rachel.horn@lw.com

15 Joseph H. Lee (SBN 248046)

16 Ryan Banks (SBN 318171)

17 650 Town Center Drive, 20th Floor

18 Costa Mesa, California 92626

19 Telephone: (714) 540-1235

20 Facsimile: (714) 755-8290

21 Email: joseph.lee@lw.com

22 ryan.banks@lw.com

23 Julianne C. Osborne (SBN 342870)

24 Alexa Solimano (SBN 335740)

25 505 Montgomery Street, Suite 2000

26 San Francisco, California 94111

27 Telephone: (415) 391-0600

28 Facsimile: (415) 395-8095

Email: julianne.osborne@lw.com

alexasolimano@lw.com

Kelley M. Storey (Admitted *Pro Hac*
Vice)

555 Eleventh Street NW, Suite 1000

Washington, D.C. 20004

Telephone: (202) 637-2200

Facsimile: (202) 637-2201

Email: kelley.storey@lw.com

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Cassandra M. Baloga (Admitted *Pro Hac Vice*)
1271 Avenue of the Americas
New York, New York 10020
Telephone: (212) 906-1200
Facsimile: (212) 751-4864
Email: cassandra.baloga@lw.com

Russell Mangas (Admitted *Pro Hac Vice*)
330 North Wabash Avenue, Suite 2800
Chicago, Illinois 60611
Telephone: (312) 876-7700
Facsimile: (312) 993-9767
Email: russell.mangas@lw.com

*Attorneys for Defendant and
Counterclaimant, Skyrise, Inc.*